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8 **UNITED STATES BANKRUPTCY COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

10 In re:  
11 Donald Charles Schwartz,

CASE NO.: 23-50372

CHAPTER: 13

**OBJECTION TO CONFIRMATION OF  
CHAPTER 13 PLAN**

Confirmation Hearing:

Date: 06/08/23

Time: 1:30 p.m.

Place: via San Jose Courtroom 11 -  
Hammond

20 Debtor.

21  
22 **TO THE HONORABLE M. ELAINE HAMMOND, UNITED STATES BANKRUPTCY**  
23 **COURT JUDGE, THE DEBTOR, DEBTOR'S COUNSEL, THE TRUSTEE, AND OTHER**  
24 **INTERESTED PARTIES:**

25 The Bank Of New York Mellon Fka The Bank Of New York, As Trustee For The  
26 Certificateholders Of The CWMBS Inc., CHL Mortgage Pass-Through Trust 2004-HYB8, Mortgage  
27 Pass Through Certificates, Series 2004-HYB8 ("Secured Creditor"), as serviced by NewRez LLC dba  
28 Shellpoint Mortgage Servicing, hereby objects to the confirmation of the Debtor's Chapter 13 Plan in

1 the above-captioned matter. Secured Creditor is a party in interest as the holder of a secured claim  
2 and therefore has standing to object to the Debtor's Chapter 13 Plan. Secured Creditor objects to the  
3 Debtor's Chapter 13 Plan on the following grounds:

4 **1. Secured Creditor's claim relating to the Property.** Secured Creditor's claim is secured by  
5 the real property commonly known as 250 Migues Mountain Lane, Aptos, CA 95003 (the  
6 "Property"). At the time of the bankruptcy petition filing, Secured Creditor's claim was in the  
7 approximate amount of \$1,397,521.24, including arrearage in the approximate amount of  
8 \$393,369.15. Secured Creditor is in the process of preparing its Proof of Claim and will file it on or  
9 before the Proof of Claim filing deadline of June 15, 2023.

10 Regarding Debtor's Plan, Secured Creditor's claim is listed in Class 1 as a cure and maintain  
11 claim. However, the claim is also listed in Class 4, reserved for wholly unsecured claims purporting  
12 to value liens at \$0.00 with a separate motion to be filed. To note, the Debtor schedules two liens in  
13 Schedule D for Shellpoint/Bank of New York Mellon: a smaller lien at \$450,000 [having the last four  
14 loan numbers for Secured Creditor's claim herein] and a larger lien at \$1,348,730.66.

15 **2. Pursuant to 11 U.S.C. § 1322(b)(5).** According to the Plan, Debtor has provided for the  
16 arrears in the amount of \$265,896.00. However, the arrearage on Secured Creditor's claim is in the  
17 amount of approximately \$393,369.15. Secured Creditor is cognizant that its proof of claim will  
18 control; however, Secured Creditor objects to the extent that its higher arrearage results in any cure  
19 not being made within a reasonable amount of time, as required by 11 U.S.C. § 1322(b)(5).

20 **3. Pursuant to 11 U.S.C. § 1325(a)(5).** To the extent the Plan purports to value Secured  
21 Creditor's lien, Secured Creditor objection out of caution to any valuation of its lien. As there has  
22 been no order valuing its lien, the Plan must provide for the full value of its claim as secured, as  
23 required by 11 U.S.C. § 1325(a)(5)(B).

24 **4. Pursuant to 11 U.S.C. § 1325(a)(6), the Plan appears infeasible.** According to the plan,  
25 Debtor will make monthly payments of \$2,500.00 for six (6) months then \$5,500.00 for fifty-four  
26 months to the Trustee for a base plan amount of \$312,000.00. However, according to the Debtor's  
27 Schedules, Debtor has a monthly net income of only \$457.58. This amount is insufficient to fund the  
28 proposed plan payments. As such, Secured Creditor submits that the Plan is infeasible. In the event

1 the Debtor nonetheless contends that the Plan is feasible, Secured Creditor would request supplement  
2 evidence or proof of the same; or, that Debtor file an amended plan that is feasible.

3 **WHEREFORE**, Secured Creditor respectfully requests that:

- 4 1. Confirmation of Debtor's Chapter 13 Plan be denied; or, in the alternative,  
5 2. Debtor's Plan be amended in accordance with this Objection.  
6 3. For other such relief as the Court deems just and proper.

7 Dated: May 22, 2023

Respectfully Submitted,

8 McCalla Raymer Leibert Pierce, LLP

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10 By: */s/Dane Exnowski*

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Dane Exnowski

12 Attorney for Secured Creditor  
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